

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

*

*

v.

*

Criminal No. 05-00119-MEF

*

PAUL MICHAEL HAMRICK

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**MOTION FOR RECONSIDERATION
AND LEAVE TO FILE MOTIONS OUT OF TIME**

The defendant, Paul Michael Hamrick, respectfully moves the Court to reconsider its Order of February 21, 2006, denying Mr. Hamrick's unopposed motion for an extension of time to file pretrial motions and to allow Mr. Hamrick to file pretrial motions out of time¹.

Prior counsel for Mr. Hamrick filed a motion for modification of scheduling order on February 9. His motion asked for an extension to file pretrial motions due to his need to withdraw from the case because of another trial conflict in a different district. Also, the motion stated that new counsel would make an appearance in a few days. Mr. Hamrick retained Mr. Jeff Deen and Ms. Michel Nicrosi as new counsel on February 20 and February 24 respectively. Throughout this time, Mr. Hamrick made every effort to retain counsel as quickly as possible. He was not able to do so until the deadline for filing motions was at hand. New counsel will be ready for trial currently set to begin on May 1, and no other change to the current scheduling

¹ At this time, the following motions are being filed on behalf of Mr. Hamrick: Motion to Dismiss the "Honest Services" Charges in Counts One, Two, and Ten Through Fourteen; Motion to Dismiss and Strike the "Misleading Conduct" Portion of the 18 U.S.C. Section 1512(b)(3) Charge in Counts One, Two, and Fifteen; Motion for Bill of Particulars; Motion for Enhanced Jury Selection Procedures; Motion for a Pretrial Hearing to Determine the Admissibility of Coconspirator Statements. A Motion to Dismiss the RICO/RICO Conspiracy Counts will be filed as soon as possible.

order is being sought. The United States is not prejudiced by this request.² And on February 27, defense counsel spoke with Assistant U.S. Attorney Stephen P. Feaga.³ Mr. Feaga stated that the United States would be satisfied with whatever decision the Court, in the appropriate exercise of its discretion, deems proper as to this motion.

The Sixth Amendment to the United States Constitution provides in part: “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.” A defendant’s right to counsel in a criminal trial is a fundamental right essential to a fair trial. *Gideon v. Wainwright*, 372 U.S. 335 (1963). The right to counsel includes the right to effective assistance, and denial entitles a defendant to a writ of habeas corpus. *Bartlett v. United States*, 475 F.Supp. 73, 77 (M.D. Fla. 1979), *citing*, *Arsenault v. Massachusetts*, 393 U.S. 5 (1968); *Powell v. Alabama*, 287 U.S. 45 (1932). It has long been recognized that a criminal defendant has a right to retain counsel of his choice. *United States v. Koblitz*, 803 F.2d 1523, 1527-28 (11th Cir. 1986), *citing*, *Chandler v. Fretag*, 348 U.S. 3, 9-10 (1954); *Powell*, 287 U.S. at 53; *Birt v. Montgomery*, 725 F.2d 587, 592093 (11th Cir.) (en banc), *cert. denied*, 469 U. S. 874 (1984).

The Constitution requires that a criminal defendant have “a fair or reasonable opportunity to obtain particular counsel, and [suffer from] no arbitrary action prohibiting the effective use of

² The Court’s Order of February 10 allowed the United States until March 6 to respond to Mr. Hamrick’s pretrial motions. Mr. Hamrick will not object to an extension of that deadline for the United States if needed.

³ On February 27, defense counsel was notified by a staff member of the U.S. Attorney’s Office that Acting United States Attorney Louis V. Franklin, Sr., was out of town and that AUSA Stephen P. Feaga would be our contact person on this date.

such counsel.” *Koblitz*, 803 F.2d at 1528, *quoting*, *Gandy v. Alabama*, 569 F.2d 1318, 1323 (5th Cir. 1978) (citations omitted). While the right to counsel of choice is not absolute and it must be balanced against the government’s interest in the fair, orderly, and effective administration of the courts, *Koblitz*, 803 F.2d at 1528, *citing* *Birt*, 725 F.2d at 593; *Gandy*, 569 F.2d at 1323; *Wilson v. Mintzes*, 761 F.2d 275, 280-81 (6th Cir. 1985), a trial judge must be mindful that “acting in the name of calendar control, [he] cannot arbitrarily and unreasonably interfere with a client’s right to be represented by the attorney [the client] has selected.” *Koblitz*, 803 F.2d 1528, *quoting* *Linton v. Perini*, 656 F.2d 207, 209 (6th Cir. 1981), *cert. denied*, 454 U.S. 1162 (1982).

Mr. Hamrick sought and retained new counsel expeditiously – and his actions have caused no delay in the schedule of this criminal trial. Immediately upon being retained, new counsel prepared several pretrial motions which raise substantive issues and are critical to Mr. Hamrick’s defense. The added costs to limited judicial and prosecutorial resources (and the public’s interest in fair and final criminal trials) will be compromised if the denial of the extension to file pretrial motions denies Mr. Hamrick the effective use of his counsel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 27, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

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